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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,504	04/25/2002	Oswald Wolff	WOLFF,D ET AL (PCT)	2655
25889	7590	07/01/2004	EXAMINER	
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			PHAM, HUONG Q	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 07/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/018,504

Applicant(s)

WOLFF ET AL.

Examiner

Huong Q. Pham

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Note that "Velcro" is a Trademark, and the use of this term in the claim renders the claim indefinite.

Claim 4 is objected to because " the one" lacks proper antecedent basis.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Wehr or Mason et al. As for claim 1, Wehr shows every claimed feature of claim 1 including a cuff 12, 16 made of stiff material ( note that " stiff is a relative term), pad 26. As for claim 6 , note that ring 12, 16 is made of plastic .

Art Unit: 3764

Mason et al shows every claimed feature of claim 1 including a cuff 18, 36 made of stiff material ( note that " stiff is a relative term), pad 60 ( figure 3). As for claim 6 , note that ring 18, 36 is made of plastic.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 -5, 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wehr or Mason et al, in view of Epler et al or of the reference # 2607383. Wehr and Mason et al each teaches a padded cuff made of stiff material. Epler et al teaches pad 20 for an ankle wrap( figure 4), reference # 2607383 teaches pad 1,2,3 for an ankle wrap( figure 9). Note that the pads of Epler et al and of the reference # 2607383 are capable of being located in the region of the tibiofibular joint . In view of the teaching of Epler et al, or of the reference # 2607383 ,it would have been obvious to an ordinary skill in the art at the time the invention was made to provide the ankle brace of Wehr or Mason et al with a pad which can be located in the region of the tibiofibular joint as recited in claim 2. As for claims 3,5, note that the cuff 12, 16 of Wehr is made of plastic, and note the closing elements of Wehr and Mason et al. The provision of more than one closing elements for an ankle brace is well known in the art, it would have been

Art Unit: 3764

obvious to an ordinary skill in the art at the time the invention was made to provide more than one closing elements to the brace of Wehr or Mason et al to firmly secure the brace to the ankle. As for claim 4, official notice is taken that the use of belt and buckles as fastening means is well- known in the art. As for claim 7-8, note that the device of Mason et al is made of polycarbonate or stainless steel.


Note that the submitted reference # DE 3300111A1 does not have English translation. Applicant is required to submit an English translation of this reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (703) 305-5129. The examiner can normally be reached on 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on ( 703) 308 - 2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
NICHOLAS D. LUCCHESI  
SUPERVISORY PATENT EXAMINER  
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June 21, 2004